Jail Appeal.

Cr.A.607/05

CF0000065970

Division Bench

25 JUL 2005

Receipt Clerk
High Court, Bilaspur

APPEAL OF PRISONER (2)

No. 96/01 Name भारत

Father's name शान्ता गोंड़

Residence सा० बड़बोई थाना पराशिया जिला छिंदवाड़ा Age

हा०मु० - कुमदा गोविन्दपुर थाना बिलासपुर

Sentenced सत्र० प्र० क्र० - 116/98 On 12.3.2001

Under section आजीवन कारावास

धारा 302 भा० द० वि० by सा० अपर सत्र न्यायाधीश सूरजपुर

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 12.7.2001
2. Date of which copy received 18.7.2005
3. Date on which appeal sent 20.7.2005
4. Whether the prisoner wished to be represented or not ~~Yes~~/No.

No. 96/01 Name भारत उर्फ शान्ता गोंड़

Continued in केन्द्रीय Jail अम्बिकापुर

No. 3989 Dated 20-07-05 199

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ सा० सत्र न्यायाधीश (न्यायिक) उच्च न्यायालय बिलासपुर to gather which a copy of order passed in this case for favour of transmission to the proper Appelliate Court.

संलग्न - निर्णय प्रति लिपि - 5 (पांच) पन्ने।

Superintendent

Superintendent
Central Jail, Ambikapur

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 199

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

17.01.2007

Shri Abhay Tiwari, Counsel for the appellant.

Shri Neeraj Mehta, Panel Lawyer for the State.

Heard.

Oral judgment dictated on *Dais.*

As per L.C. Bhadoo, Ag. Chief Justice;

This appeal is directed against the judgment of conviction and order of sentence dated 12/3/2001 passed by the Additional Sessions Judge, Surajpur District – Sarguja (C.G.) in Sessions Trial No.116/1998, whereby, the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- , in default of payment of fine to further undergo R.I. for 1 year. It is mentioned that the accused/appellant is in detention since 12/11/1997.

The case of the prosecution, in brief, is that on 09/11/1997 at about 5:00 p.m., in the vicinity of Govindpur, Village - Kumda, accused assaulted the deceased with an iron rod (crowbar) on his head, on account of old animosity, as a result of which, Prem Singh sustained injury on head, fell down and became

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

unconscious. The incident was witnessed by PW-1 – Govind, PW-2 – Suresh Kumar and PW-5 – Mangalsai. PW-4 – Janki Bai, wife of the deceased, was informed about the incident by one Bablu, on which, she saw her husband in an injured condition. The villagers alongwith the Sarpanch namely Satyvan reached to the scene of occurrence and they took the injured - Prem Singh to the Dispensary, Kumda. The matter was reported by Janki Bai to the Police Station – Bishrampur, on which, First Information Report (Ex.-P/4) was registered for commission of offence under Section 307 of IPC and Prem Singh was sent to Central Hospital, Bishrampur, from where, he was referred to the Bhilai hospital for treatment, ~~and~~ when he was taking treatment, he succumbed to the injury on 13.11.1997. The merg intimation (Ex.-P/11) was sent to the Police Station – Bhilai Nagar, on which, investigation was conducted and the Investigating Officer prepared inquest (Ex.-P/9) in presence of the witnesses on the body of deceased. The body of Prem Singh was sent for postmortem examination (Ex.-P/10) to Govt. Hospital, Durg, where Dr. S.R. Churendra (PW-10) conducted the postmortem on the body of deceased and opined that the cause of death was head injury and death was homicidal in nature. Thereafter, the case was transferred to the Police Station – Bishrampur.

After completion of the investigation, the charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Surajpur, who in turn committed the case

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आदेश पत्रक (पूर्वानुबद्ध)

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to the Sessions Judge, Ambikapur, from where the learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined 11 witnesses. The statement of the accused/appellant was recorded under Section 313 Cr.P.C., in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime in question.

Learned Additional Sessions Judge after hearing counsel for the parties and perusal of record convicted and sentenced the accused/appellant as aforementioned.

As the accused/appellant was not able to furnish bail bond, an application was moved on behalf of the appellant to grant further time. During the course of hearing, learned counsel for the appellant argued that accused/appellant is in detention for more than 9 years, therefore, the appeal itself may be heard finally, to which, Shri Neeraj Mehta, Panel Lawyer for the State readily agreed.

We have heard respective counsel for the parties.

Shri Abhay Tiwari, Counsel for the appellant has not disputed the homicidal death of Prem Singh. Apart from that, from the ocular evidence of PW-1 – Govind, PW-2 – Suresh Kumar and PW-5 – Mangalsai, it is established that the accused

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assaulted the deceased with an iron rod (crowbar) on his head. The medical evidence of Dr. S.R. Churendra (PW-10), who conducted the postmortem on the body of the deceased, would show that there was one injury on the head and on account of that, there was a linear fracture on the skull bone, brain was ruptured and clotted blood was also present, which caused the death of Prem Singh and death was homicidal. In view of this ocular evidence as well as medical evidence, it is established that the death of Prem Singh was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-1 – Govind has stated that on the fateful day, at about 5:00 p.m., when Prem Singh returned from the market, Mangalsai informed him that the accused has taken away his bicycle after snatching the same from him. Thereafter, Prem Singh went to the accused - Bharat Gond for taking back the bicycle and at that time, when he asked the accused to return back the bicycle, accused attacked the deceased on his head with an iron rod (crowbar), as a result of which, he fell down. This evidence has been corroborated by PW-5 – Mangalsai. Even though PW-2 – Suresh Kumar, son of the deceased, has also been examined as an eye-witness, but in the cross-examination, he has admitted that the place of occurrence was not visible from the side of his house and when he was playing in front of the door of his house, on hearing some quarrelsome, he went towards the place of occurrence and saw that his father was lying in an injured

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आदेश पत्रक (पूर्वानुबद्ध)

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condition, and in fact, this witness has not witnessed the accused assaulting the deceased.

The defence has not been able to elicit any circumstance in the cross-examination of these witnesses, which discredit the evidence of these witnesses and the presence on the scene of occurrence is also established. Moreover, the weapon of offence – iron rod (crowbar) was recovered at the instance of accused/appellant and the evidence of these witnesses has also been corroborated by the medical evidence, in which, the injury was found on the head and the same has been stated by these eye-witnesses that the accused assaulted the deceased with an iron rod (crowbar) on his head.. Therefore, the involvement of the accused in committing the crime in question is established beyond reasonable doubt.

In the facts and circumstances, we are of the considered opinion that the judgment of the trial Court does not suffer from any illegality or infirmity.

Learned counsel for the appellant argued that when the deceased went to the house of accused, all of a sudden, the accused, without any intention to cause death of the deceased, assaulted him with the help of an iron rod (crowbar) and that too only once. Moreover, the incident took place on 09/11/1997, whereas, Prem Singh died on 13/11/1997 i.e about 4 days after

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the incident, therefore, the offence against the accused/appellant does not travel beyond Section 304-II of IPC.

On the other hand, learned counsel for the State placing reliance on the judgment of the Apex Court in the matter of ***State of Rajasthan v. Dhool Singh*** reported in ***AIR 2004 SUPREME COURT 1264*** argued that the injury inflicted by the accused on the head of the deceased by the iron rod (crowbar) was sufficient in the ordinary course of nature to cause the death, therefore, accused has been rightly convicted for commission of offence under Section 302 of IPC.

Having heard learned counsel for the parties, we have perused the ocular evidence as well as the medical evidence on record.

The facts are admitted that the offence was committed in front of the house of the accused, where the deceased had gone to bring back the bicycle, which was snatched by the accused/appellant from Mangalsai and in that process, the accused assaulted the deceased with an iron rod (crowbar) on his head and he entered in his house. As per the medical evidence, there was a linear fracture on the head and Dr. S.R. Churendra , who conducted the postmortem on the body of the deceased, in cross-examination, has stated that the death of Prem Singh was possible on account of the said injury. In the examination-in-chief or in cross-examination, he has not stated that the injury was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sufficient in the ordinary course of nature to cause death of deceased. Moreover, he has further stated there was a possibility of survival of the injured person. It is an admitted position that Prem Singh died after 4 days of the incident and the prosecution evidence is not of suggestive nature that the accused attacked the deceased with an intention to cause his death. It appears from the record that when Prem Singh went to the accused for demanding the bicycle, in that process, some altercation might have taken place and the accused assaulted the deceased on the head with an iron rod (crowbar) and he went inside his house. Therefore, the incident took place all of a sudden and only one injury was inflicted on the head of deceased and the deceased died after 4 days of the incident. As per the medical evidence, the Doctor has not stated that the injury found on the head of deceased was sufficient in an ordinary course of manner to cause death of deceased.

In view of the above, we are of the considered opinion that the prosecution has not been able to establish that the accused assaulted the deceased on the head of the deceased with an intention to cause his death. Therefore, an offence under Section 304-II of IPC is made out against the accused.

As far as in the judgment cited by learned counsel for the State is concerned, the Apex Court reached to the conclusion that as per the medical evidence, the injury was sufficient in the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ordinary course of nature to cause the death. Moreover, the injury was inflicted with the sharp cutting weapon on the neck, which damaged the blood vessels of the neck, resulting in excessive bleeding, therefore, the Court reached to the conclusion that the injury was sufficient in the ordinary course of nature to cause death and the Court also held that offence under Section 302 was made out against the accused, therefore, the above facts of the case are distinguishable.

In the result, the conviction and sentence imposed against the appellant under Section 302 of IPC cannot be sustained and is set aside.

The conviction and sentence imposed upon the accused/appellant under Section 302 of IPC is hereby set aside and instead thereof, he is convicted under Section 304 Part II of IPC and is sentenced to undergo R.I. for 10 years. As per the judgment, the accused is in detention since 12/11/1997 till date; therefore, the accused is entitled for set off the detention period against the sentence imposed upon him.

Certified copy as per rules.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
SUNIL KUMAR SINHA
Judge

Shyna

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